

## Internal Revenue Service

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PLR-130442-06

Date:

December 04, 2006

Target =

Sub 1 =

Sub 2 =

Target Sub 1 =

Target Sub 2 =

Target Sub 3 =

Target Sub 4 =

Joint Venture 1 =

Joint Venture 2 =

Company A =

Company A Sub 1 =

Company A Sub 2 =

Company B =

Acquiring =

Pension Plan =

Pension Trustee =

Country A =

Country B =

Country C =

Country D =

Region A =

Business =

Exchange =

Bankruptcy Court =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

Year 1 =

Year 2 =

Year 3 =

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Dear :

We respond to your June 14, 2006, request for rulings on certain Federal income tax consequences of a completed transaction (the Completed Transaction). Additional information was submitted on October 20, 2006, and November 21, 2006. The information provided in the request and later correspondence is summarized below.

Target was a public limited company incorporated under the laws of Country A and Country B. The stock of Target was publicly traded on the Exchange. Target acted as a holding company and was engaged in Business through subsidiaries and corporate joint ventures.

Target owned all the stock of Sub 1, a private limited company incorporated under the laws of Country A and Country B and an entity disregarded as separate from its owner for U.S. Federal income tax purposes. Target also owned all the stock of Sub 2, a private limited company that was incorporated under the laws of Country A and Country B.

Sub 1 owned all the stock of Target Sub 1, a domestic corporation and the common parent of an affiliated group of corporations that joined together in filing a consolidated U.S. Federal income tax return (Old Target Consolidated Group). The Old Target Consolidated Group's taxable year end was Date 1, and each member of the Old Target Consolidated Group was an accrual basis taxpayer for U.S. Federal income tax

purposes. Members of the Old Target Consolidated Group were Target Sub 1's wholly owned subsidiary Target Sub 2, which owned all of the stock of Target Sub 3, which owned all the stock of Target Sub 4. Target Sub 4 was directly and indirectly engaged in Business in Region A.

Company A, a publicly traded corporation formed under the laws of Country C, was Target's largest single shareholder, owning a percent of the stock of Target. Company A also owned all of the stock of Company A Sub 1, incorporated under the laws of Country A and Country B, and Company A Sub 2, incorporated under the laws of Country C.

Target and Company A Sub 2 entered into a joint venture, and each held b percent of the stock of Joint Venture 1. Target also entered into a joint venture with Company B, an unrelated corporation incorporated under the laws of Countries A and B. Target held c percent of Joint Venture 2, and Company B held d percent.

Immediately prior to the Completed Transaction as described below, the obligations of Target and its affiliates to third parties totaled \$e. Target's indebtedness consisted of \$f of secured debt financing (Existing Senior Facilities) from various third party banks (Bank Lenders). The Existing Senior Facilities were split into four tranches. Target was the borrower on the first three tranches, which totaled \$g. Target Sub 4 was the borrower on the fourth tranche, which totaled \$h. The Existing Senior Facilities were secured by substantially all of Target's assets, except Target's investment in Joint Venture 1.

Target also issued \$i of fixed rate, unsecured convertible loan notes (Loan Notes) to Company A Sub 1. Target also had a \$j liability to its Pension Plan. Target administered the Pension Plan for the benefit of its Country D employees. The Pension Trustee was the sole trustee of the Pension Plan.

In addition, obligations existed among Target and certain of its affiliates. Target owed \$k to Sub 2 and Target owed \$h to Target Sub 4. Target Sub 1 also owed \$l to Sub 2 pursuant to a Share Subscription Agreement.

Beginning in Year 1, Target experienced financial difficulties. Also, on Date 2, Target lost its entire investment in Joint Venture 2. By Year 2, Target was unable to meet its existing financial obligations, and Target's liabilities exceeded the fair market value of its assets. Immediately before the Completed Transaction, Target had two assets with value: the stock of Target Sub 1 with a fair market value of \$m and Joint Venture 1 with a fair market value of \$n. On Date 3, Target was delisted from the Exchange.

As part of a voluntary reorganization under Country D law, Target reached an agreement with its creditors to restructure by forming a new corporation (Acquiring) and

transferring Target's assets to Acquiring in exchange for Acquiring stock and distributing Acquiring stock in exchange for Target's outstanding debt obligations to Bank Lenders and to Company A Sub 1.

Thus, the following steps of the Completed Transaction were undertaken:

- (i) On Date 4, Target formed Acquiring;
- (ii) On Date 5, Target and Company A Sub 1 modified the Loan Notes to permit conversion of the Loan Notes into common shares of Target stock or preferred shares of Acquiring at the option of the holder. Company A Sub 1 also agreed to waive the interest outstanding on the Loan Notes;
- (iii) On Date 5, Sub 1 transferred all of the stock of Target Sub 1 to Target for \$o;
- (iv) On Date 5, Target placed Sub 2 into a voluntary liquidation proceeding under Country D law. Pursuant to the proceeding, Sub 2 distributed to Target the benefits of the Share Subscription Agreement. In addition, Sub 2 distributed to Target a receivable of \$k, which Target immediately cancelled;
- (v) On Date 5, Target contributed the Share Subscription Agreement to the capital of Target Sub 1;
- (vi) On Date 6, Target and the Bank Lenders entered into a Transfer Agreement that governed the transfer of Target Sub 1 stock to Acquiring;
- (vii) On Date 6, Target and the Pension Trustee entered into the Deed of Compromise that governed the settlement of all pension claims against Target;
- (viii) On Date 6, Target transferred all of the stock of Target Sub 1 to Acquiring in exchange for p shares of Acquiring common stock; q shares of Acquiring series A preferred stock; q shares of Acquiring series B preferred stock; r shares of Acquiring series C preferred stock; the assumption of Target's obligation to the Pension Plan (approximately \$s); the assumption of a portion of the amount Target owed to the Bank Lenders under the Existing Senior Facilities (the Novated Debt) (approximately \$t); and the assumption of facility fees related to the novation (approximately \$u). The Bank Lenders granted Target a novation with respect to the Novated Debt. Furthermore, Acquiring agreed to indemnify Target and its remaining subsidiaries with respect to certain liabilities up to a predetermined amount and to pay professional

fees related to the Completed Transaction. In addition, Acquiring gave a security interest in certain of its assets;

- (ix) On Date 6, Target transferred w shares of Acquiring's series A preferred stock, w shares of series B preferred stock, x shares of series C preferred stock, and y shares of common stock to the Bank Lenders in satisfaction of the Existing Senior Facilities with a principal amount of \$z. Each of the Bank Lenders, as the most senior class of creditors, received the same ratio of stock to nonstock consideration for its claim;
- (x) On Date 6, Target transferred w shares of Acquiring's series A preferred stock, w shares of series B preferred stock, aa shares of series C preferred stock, and y shares of common stock to Company A Sub 1 in satisfaction of the Loan Notes with a principal amount of \$bb. The remaining Loan Notes of \$cc were converted to Target common stock (collectively, steps (ix) and (x) are hereinafter referred to as the Creditor Distribution).
- (xi) On Date 6, Target transferred dd shares of Acquiring's common stock to the Pension Trustee in satisfaction of its obligation under the Deed of Compromise.
- (xii) On Date 6, Target transferred ee shares of Acquiring common stock to certain management employees of Target Sub 4.
- (xiii) On Date 6, Target transferred its interest in Joint Venture 1 to Company A Sub 2 in exchange for \$n.
- (xiv) On Date 6, Target applied the sale proceeds from step (xiii) to pay for restructuring fees and other expenses of \$ff and to repay \$gg due to the Bank Lenders and to repay \$h due to Target Sub 4. Target Sub 4 applied the proceeds to repay the Bank Lenders under the fourth tranche of the Existing Senior Facilities.
- (xv) On Date 7, Company A Sub 1 sold its entire interest in Acquiring for \$hh to a wholly owned foreign subsidiary of Company A.
- (xvi) Target resolved all known creditors' claims and liquidated on Date 8. As part of this process, all of Target's subsidiaries were dissolved and liquidated. No distributions were made to Target's shareholders in cancellation of their stock.

In Year 3, Acquiring sought a court-supervised bankruptcy reorganization under Chapter 11 of the United States Bankruptcy Code (the Bankruptcy Proceeding). On



Date 9, the Bank Lenders, Company A, and the Pension Trustee entered into a Restructuring Agreement under the supervision of the United States Bankruptcy Court. On Date 10, the Bankruptcy Court confirmed the bankruptcy plan, which resulted in the cancellation of all the existing common and preferred stock of Acquiring and the issuance of new common stock in satisfaction of \$ij of the Novated Debt and other indebtedness owed to the Bank Lenders.

On Date 11, Acquiring emerged from the Bankruptcy Proceeding, and, on Date 12, Acquiring's shareholders sold Acquiring stock to a third party for \$ee in a transaction that included the repayment of existing indebtedness and the recapitalization of Acquiring with additional equity and new debt.

In connection with the Completed Transaction, the taxpayers have made the following representations:

- (a) The fair market value of Acquiring stock received by Company A and the Bank Lenders was approximately equal to the value of Target's securities and debt surrendered or satisfied in the exchange.
- (b) At least 50 percent of the proprietary interest in Target was exchanged for Acquiring stock and will be preserved within the meaning of §1.368-1(e) of the Income Tax Regulations.
- (c) Neither Acquiring, nor any person related to Acquiring as defined in §1.368-1(e)(4), had any plan or intention to reacquire its stock issued in the Completed Transaction.
- (d) Acquiring acquired more than 50 percent of the fair market value of the gross assets held by Target and more than 70 percent of the fair market value of the operating assets held by Target as of the date of the Completed Transaction.
- (e) Before the Completed Transaction, Company A was a shareholder of Target.
- (f) After the Completed Transaction, Company A was in control of Acquiring within the meaning of §368(a)(2)(H)(i) of the Internal Revenue Code.
- (g) Stock of Acquiring was distributed to the holders of the Loan Notes pursuant to the Creditor Distribution in a transaction that qualifies under §354.

- (h) No holder of the Loan Notes realized a gain pursuant to the distribution of Acquiring stock in satisfaction of such notes pursuant to the Creditor Distribution.
- (i) At the time of the Completed Transaction, Acquiring did not have outstanding warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Acquiring that, if exercised or converted, would affect Company A's acquisition or retention of control of Acquiring as defined in §368(a)(2)(H)(i).
- (j) The liabilities of Target assumed by Acquiring (as determined under §357(d)) were incurred by Target in the ordinary course of its business and are associated with the assets transferred.
- (k) The Existing Senior Facilities are not securities for purposes of §354.
- (l) Following the Completed Transaction, Acquiring will continue a significant historic business of Target or use a significant portion of Target's historic business assets in a business within the meaning of §1.368-1(d).
- (m) Acquiring had no intention to sell or otherwise dispose of any of the assets of Target acquired in the transaction, except for dispositions made in the ordinary course of business. However, a foreign subsidiary of Target Sub 4 intended at the time of the Completed Transaction to sell a dormant manufacturing facility. The facility sold for \$kk net of selling expenses.
- (n) Target, Acquiring, and Company A have paid or will pay their respective expenses, if any, incurred in connection with the Completed Transaction.
- (o) There was and is no intercorporate indebtedness existing between Acquiring and Target that was issued, acquired, or will be settled at a discount.
- (p) No two parties to the transaction are investment companies as defined in §368(a)(2)(F)(iii) and (iv).
- (q) The Completed Transaction was carried out for valid business reasons.
- (r) The fair market value of the assets of Target transferred to Acquiring was equal to or exceeded the sum of the liabilities assumed by Acquiring (as determined under §357(d)).

- (s) The total adjusted basis of the assets of Target transferred to Acquiring were equal to or exceeded the sum of the liabilities assumed by Acquiring (as determined under §357(d)).
- (t) Immediately after the transfer of the stock of Target Sub 1, Target owned more than 50 percent of the fair market value of the outstanding stock of Acquiring as a result of owning stock of Target Sub 1.
- (u) With respect to the Completed Transaction, neither Target nor Acquiring was under the jurisdiction of a court in a title 11 or similar case within the meaning of §368(a)(3)(A).
- (v) Acquiring will file a §381 statement pursuant to §1.381(b)-1(b) specifying Date 6 as the date of transfer for the Completed Transaction.
- (w) Target has never conducted a trade or business within the United States within the meaning of §882.
- (x) Target Sub 1 has not been a United States real property holding company, as defined in §897(c)(2), at any time.
- (y) At the time of the Completed Transaction, Target did not have any United States Shareholder within the meaning of §1.367(b)-3(b)(2).
- (z) Acquiring experienced an ownership change, as defined in §382(g)(1), on Date 11.
- (aa) Acquiring did not experience an ownership change, as defined in §382(g)(1), during the period between the Completed Transaction and the Bankruptcy Proceeding.
- (bb) Acquiring was under the jurisdiction of the United States Bankruptcy Court immediately before the ownership change occurred in a title 11 or similar case, as defined in §§382(l)(5)(G) and 368(a)(3)(A).
- (cc) The transaction that resulted in an ownership change was pursuant to a bankruptcy plan approved by the United States Bankruptcy Court.
- (dd) The Bank Lenders received 100 percent of the common stock of Acquiring in the Bankruptcy Proceeding as a result of being creditors of Acquiring immediately before the ownership change.
- (ee) The Bank Lenders that are qualified creditors, as defined in §1.382-9(d), of Acquiring own (after the ownership change) stock of Acquiring that

meets the requirements of §1504(a)(2) (determined by substituting “50 percent” for “80 percent”). For purposes of this representation, §1.382-9(d)(5)(iv) applies to the exchange of Target debt obligations for Acquiring debt obligations as a result of the Completed Transaction.

- (ff) At the time of the Completed Transaction, Target had a net unrealized built-in gain within the meaning of §382(h).
- (gg) Immediately after the Bankruptcy Proceeding, there were no outstanding options, including interests that are treated as an option under §1.382-9(e)(1), that, if exercised or converted, would affect the ownership of a controlling interest by qualified creditors described in the previous representation.
- (hh) None of the Bank Lenders that are qualified creditors are described in §1.382-9(d)(4)(i).
- (ii) Acquiring does not intend to make an election under §382(l)(5)(H) in respect of the ownership change resulting from the implementation of the bankruptcy plan.

Based solely upon the information submitted and the representations set forth above, we rule as follows:

- (1) The acquisition by Acquiring of substantially all the assets of Target in exchange for Acquiring common and preferred stock and the subsequent distribution of the stock to Target’s creditors in satisfaction of their claims and the assumption of Target’s liabilities by Acquiring will be treated as a reorganization under §368(a)(1)(D). Target and Acquiring each will be “a party to a reorganization” within the meaning of §368(b).
- (2) No gain or loss will be recognized by Target on the transfer of substantially all of its assets to Acquiring in exchange for Acquiring stock and the assumption by Acquiring of Target’s liabilities (§§361(a) and 357(a)).
- (3) No gain or loss will be recognized by Target on the distribution of Acquiring stock to its creditors (§361(c)(3)).
- (4) No gain or loss will be recognized by Acquiring on the receipt of the Target assets in exchange for Acquiring stock and the assumption by Acquiring of Target’s liabilities (§1032(a)).

- (5) The basis of each of Target's assets in the hands of Acquiring will equal the basis of that asset in the hands of Target immediately before the transaction (§362(b)).
- (6) The holding period of each Target asset in the hands of Acquiring will include the period during which the asset was held by Target (§1223(2)).
- (7) Acquiring will generally inherit the items of Target described in §381(c) and the regulations thereunder.
- (8) Acquiring will be a successor corporation with respect to Target within the meaning of §1.382-2(a)(5).
- (9) Target will be a predecessor corporation with respect to Acquiring within the meaning of §1.382-2(a)(6).
- (10) For purposes of §§382 and 383 and the regulations thereunder, Target and Acquiring will be treated as a single entity (§382(l)(8)).
- (11) No gain or loss will be recognized by the holders of the Loan Notes on the exchange of the principal portion of the notes for Acquiring stock (§354(a)(1)). The provisions of §354(a)(2)(C)(i) will not apply since the Acquiring preferred stock was received in exchange for securities.
- (12) The Bank Lenders will recognize gain or loss on the exchange of the principal portion of the Existing Senior Facilities for Acquiring stock (§1001).
- (13) The Completed Transaction resulted in a reverse acquisition within the meaning of §1.1502-75(d)(3).
- (14) The Completed Transaction will not terminate the Old Target Consolidated Group. The Old Target Consolidated Group will remain in existence with Acquiring as the common parent of the group (§1.1502-75(d)(3)).
- (15) The members of the Old Target Consolidated Group, prior to the Completed Transaction, will not close their taxable years as a result of the transaction and will remain on the taxable year previously employed by the Old Target Consolidated Group (§1.1502-75(d)(3)(v)(a)).
- (16) Acquiring's basis in stock of Target Sub 1 immediately after the Completed Transaction will equal Target Sub 1's net asset basis as determined under §1.1502-31(c).

- (17) A Bank Lender will be a qualified creditor of Acquiring within the meaning of §1.382-9(d)(1) to the extent the third party bank owned qualified indebtedness to Acquiring immediately before the ownership change caused by the Bankruptcy Proceeding.
- (18) In determining whether Acquiring's debt obligations are qualified indebtedness within the meaning of §1.382-9(d)(2), the Bank Lenders will be considered to have owned the Novated Debt for the period they owned the Existing Senior Facilities (§1.382-9(d)(5)(iv)(A)).
- (19) For purposes of determining whether the ownership change that occurred with respect to the Bankruptcy Proceeding met the 50 percent requirement of §382(l)(5)(A)(ii), stock owned by a Bank Lender after the ownership change will be taken into account to the extent that the Bank Lender is a qualified creditor that received Acquiring stock in full or partial satisfaction of qualified indebtedness (§1.382-9(d)(1)).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. No opinion is expressed on the post-bankruptcy sale of Acquiring and its effect for purposes of §382(l)(5). Furthermore, no opinion is expressed as to the Federal income tax treatment of the transaction under §§367, 1248 or 897.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2006-1, 2006-1 I.R.B. 1, 49. However, when the criteria in section 11.05 of Rev. Proc. 2006-1, 2006-1 I.R.B. 49, are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this

requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Filiz A. Serbes  
Branch Chief, Branch 3  
Office of Associate Chief Counsel (Corporate)